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In re Application of
FAUBLE et al.
Application No.: 10/511,013
PCT No.: PCT/US03/11130
Int. Filing Date: 10 April 2003
Priority Date: 11 April 2002
Attorney Docket No.: 70078-0212
For: FUEL FILLER HOSE

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DECISION

This is a response to applicants' Petition to Withdraw the Holding of Abandonment, treated as a "Petition under 37 CFR 1.8(b)" filed 22 August 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 17 June 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements (PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge under 37 CFR 1.492(e).

On 12 July 2006, a Notification of Abandonment was mailed to applicant indicating that no reply to the 905 had been submitted.

On 18 July 2006, in response to the Notification of Abandonment, applicants filed the instant submission, which was accompanied by: a copy of "Response to Notification of Missing Requirements under 35 U.S.C. 371" and an executed declaration, in compliance with 37 CFR 1.497. Petitioner alleges that the executed declaration was submitted by facsimile on 21 June 2005.

On 3 August 2006, a decision was mailed, dismissing the request to accept the declaration submitted by facsimile because the petition was not personally signed by the practitioner and thus was not an acceptable filing.

On 22 August 2006, applicant filed the instant petition along with a copy of the declaration which had been previously submitted via facsimile.

DISCUSSION

A review of the application file reveals that the original declaration allegedly filed 21 June 2005 under 37 CFR 1.8 is not located in the application file.

37 CFR 1.8(b) states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Applicant has now submitted a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. Applicant also provided a copy of the sending unit's report confirming transmission on 21 June 2005. Thus, Items (2) and (3) above are now satisfied.

The Notification of Abandonment is hereby **VACATED**.

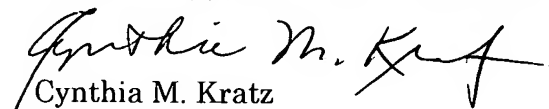
The declaration filed on 22 August 2006 is accepted in lieu of the originally filed declaration filed 21 June 2005. The \$130 surcharge for filing the declaration after the thirty month period will be charged to applicant's deposit account per their authorization. A review of the declaration reveals that it meets the requirements of 37 CFR 1.497(a) and (b).

CONCLUSION

Therefore, applicants' petition under 37 CFR 1.8(b) is **GRANTED**. The declaration filed 26 August 2006 is accepted in lieu of the declaration, originally filed on 21 June 2005. The \$130 surcharge for filing the declaration after the thirty month period will be charged to applicant's deposit account per their authorization.

The 11 July 2006 Notification of Abandonment is hereby **VACATED**.

The application will be forwarded to the United States Designated/Elected Office for further processing in accord with this decision. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is **21 June 2005**.


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